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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,968	03/05/2002	Richard B. Streeter	VIA-17	7502
7590		10/13/2006		
Pandiscio & Pandiscio 470 Totten Pond Road Waltham, MA 02154			EXAMINER PELLEGRINO, BRIAN E	
			ART UNIT 3738	PAPER NUMBER

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/090,968

Applicant(s)

COHN ET AL.

Examiner

Brian E Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8/15/06.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/11/06 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5,12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In a response filed 12/5/03 the Applicants elected Specie V, Fig. 11. It is not understood as to how the new limitation in claims 1,12 that the implantable device **elected** is "self-cinching". According to the Examiner's understanding of stents, the limitation is going to be interpreted such that "cinching" means shortening.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hojeibane (5911732) in view of Euteneuer (5681345). Hojeibane shows (Fig. 3) a bendable elongated body with at least two spring segment 5 connecting proximal and distal ends. Hojeibane also discloses that the spring segments or connectors can be elastic or of shape memory material, col. 7, lines 7,8,13,14,40. Hojeibane additionally discloses the elongate body is expandable to a second configuration, col. 5, lines 10,11. Hojeibane does disclose that the stent shortens upon expansion, col. 4, lines 48,49, col. 6, lines 38-42. The examiner is interpreting the claimed elements "self-cinching" in this way: the shortening of the stent is "self-cinching". Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). See also *In re Morris*, Fed. Cir. 1997 127 F3d 1048, 1054,1055. However, Hojeibane does not disclose that there is a plurality of barbs on fixed length sections of the proximal and distal ends. Euteneuer teaches (Fig. 10) a collar with fixed length and diameter sections at the proximal and distal ends of the elongate body and contain barbs 34. Euteneuer also teaches that the barbs are used for securing a sleeve on the stent, col. 6, lines 25-27. Euteneuer additionally teaches that the sleeve is advantageous in that it allows for cellular ingrowth and better securement of the stent device, col. 8, lines 5-17. It would have been obvious to one of ordinary skill in the art to incorporate the barbed proximal and distal end

sections with a sleeve as taught by Euteneuer with the stent of Hojeibane such that it enables the device to be better anchored through the use of natural occurring body material in the form of a sleeve.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hojeibane '732 in view of Euteneuer '345 as applied to claim 4 above, and further in view of Solem et al. '432. Hojeibane as modified by Euteneuer is explained supra. However, Hojeibane in view of Euteneuer fail to disclose barbs on an intermediate section of the elongate body. Solem et al. teach (Fig. 3) that the intermediate section of the stent includes barbs **10**. It would have been obvious to one of ordinary skill in the art to incorporate barbs also on the intermediate section as taught by Solem with the stent of Hojeibane as modified by Euteneuer such that it further limits the stent from movement or dislodges from the target site it was implanted.

Claim 12 as best understood, is rejected as best understood under 35 U.S.C. 103(a) as being unpatentable over Solem et al. '432 in view of Hojeibane '732. Solem et al. disclose a method of reducing mitral regurgitation by placing a prosthesis into the coronary sinus to reduce the gap between leaflets, col. 4, lines 19-21,38,39. Solem also discloses the device is made of a shape memory alloy (col. 3, lines 38-41) which inherently enables the device to transform from a first configuration to a second configuration. It can be seen (Fig. 3) the device is a spring-like structure with barbs that extend from end to end. The examiner is interpreting the claimed elements "self-cinching" in this way: the shortening of the stent is "self-cinching". Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181

USPQ 641 (CCPA 1974). See also *In re Morris*, Fed. Cir. 1997 127 F3d 1048, 1054,1055. Solem also discloses that the stent shortens (col. 2, lines 31-34,39,40) and thus is interpreted as “self-cinching”. However, Solem does not disclose that there are fixed length sections at the proximal and distal ends. Hojeibane teaches Fig. 3) a stent having spring sections between tubular support sections or “collars”. It would have been obvious to one of ordinary skill in the art to incorporate the proximal and distal end collars as taught by Hojeibane with the stent of Solem such that it provides more radial support to the patient’s vessel.

### ***Response to Arguments***

Applicant's arguments filed 8/15/06 have been fully considered but they are not persuasive. Applicant argues that the prior art (Hojeibane or Solem) fail to disclose the claimed “self-cinching”. However, Applicant has failed to define this limitation and the Examiner is entitled to give terms in a claim its plain meaning as interpreted by one of ordinary skill in the art. It is noted that the specification must clearly set forth the definition explicitly and with reasonable clarity, deliberateness, and precision.

Exemplification is not an explicit definition. Even explicit definitions can be subject to varying interpretations. See *Teleflex, Inc. v. Ficosa North America Corp.*, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 60 USPQ2d 1851,1854 (Fed. Cir. 2001) and MPEP 2111.01. As mentioned above, the Examiner interpreted the prior art feature of “shortening” to mean “self-cinching.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (571) 272-4756. The examiner can normally be reached on Monday-Thursday from 7:30am to 5pm. The examiner can also be reached on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738



**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**